IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 6364 of 2006
Date of decision May 1, 2007

Mohinder Pal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR AND
HON'BLE MR.JUSTICE L.N. MITTAL

Present: Mr. S. S. Godara, Advocate
for the petitioner.

Mr. Salil Sagar, Additional
Advocate General, Punjab.

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J.S.Khehar, J (Oral)

The petitioner was inducted into service of the respondents as a Beldar on 27.10.1978 i.e. the same date on which respondent No.4 was also appointed as a Beldar. It is however, not a matter of dispute that in the cadre of Beldars the petitioner was senior to respondent No.4.

Respondent No.4 was promoted as Agriculture Sub Inspector against a vacancy reserved for scheduled caste candidates in the year 1990. At the time of consideration of the claim of respondent No.4 for promotion as Agriculture Sub Inspector, the claim of the petitioner was not considered despite his higher position in the seniority list on account of the fact that he did not belong to the said reserved category. Be that as it may, the petitioner was eventually promoted as an Agriculture Sub Inspector by an order dated 20.1.2001. On his promotion as Agriculture Sub Inspector, the petitioner claims seniority over respondent No.4 in view

of the decision rendered by the Hon'ble Supreme Court in **Ajit Singh Januja and others Vs. State of Punjab and others** 1996(2) RSJ 119 wherein the Apex Court declared the legal position as under:-

> "We respectfully concur with the view in Union of India Vs.Virpal Singh Chauhan, (supra) that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated 'consequential seniority'/ if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his seniority belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted Scheduled Caste/Tribe candidate. As already pointed out above that when a Scheduled Caste/Tribes candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such Scheduled Caste/Tribe candidate, in this process he does not supersede his seniors belonging to the general category. In this process there was no occasion to examine the merit of such Scheduled Caste/Tribe candidate, vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper

to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the Scheduled Caste/Tribe who had been given accelerated promotion against the post reserved for him. Whenever a qeustion arises for filling up a post reserved for Scheduled Caste/Tribe candidate is still higher grade then such candidate belonging to Scheduled Castes/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution.

Since the aforesaid claim of the petitioner was not being acceded to by the respondents, the petitioner approached this Court by

filing C.W.P. No. 10640 of 2005. The aforesaid writ petition was disposed of by an order dated July 15, 2005 wherein a direction was issued to the respondents to take a final decision on the legal notice issued on behalf of the petitioner (wherein the petitioner claimed seniority over respondent No.4 in the cadre of Agriculture Sub Inspector on account of the fact that he was senior to respondent No.4 in the cadre of Beldars, as well as, on account of judgment rendered by the Apex Court in Ajit Singh Januja's case). The claim of the petitioner was considered by the respondents in terms of the directions issued by this Court in CWP No. 10640 of 2005 and an order dated 19.9.2005 (Annexure P-5) was passed. By the aforesaid order the claim raised by the petitioner was declined, inasmuch as, the petitioner was held to be not entitled to seniority over respondent No.4. The aforesaid order dated 19.9.2005 is subject matter of challenge at the hands of the petitioner through the instant writ petition.

While assailing the order dated 19.9.2005, learned counsel for the petitioner has reiterated his claim on the basis of the decision by the Hon'ble Supreme Court in Ajit Singh Januja's case (supra), and stated nothing further thereafter. In order to repudiate the contention advanced by the learned counsel for the petitioner, learned counsel for the respondent has advanced two submissions. Firstly it is the contention of the learned counsel for the respondents that respondent No.4 was promoted as Agriculture Sub Inspector in the year 1990, i.e. years before the petitioner was promoted as such, in the year 2001, and as such, his claim for seniority over respondent No.4 is clearly unacceptable in law.

The second contention of learned counsel for the petitioner is based on policy instructions issued by the State Government dated 15.12.2005 consequent upon the Constitution 85th Amendment Act, 2001 whereby article 16(4-A) was introduced into the Constitution of India.

We have considered the rival contentions of the parties. It is not a matter of dispute that in the cadre of Beldars, the petitioner was senior to respondent No.4. Onward promotion from the post of Beldar is admittedly to the post of Agriculture Sub Inspector. Whilst respondent No.4 was promoted as such, in the year 1990, the petitioner was admittedly promoted as Agriculture Sub Inspector in the year 2001. The only question to be considered while applying the decision rendered by the Hon'ble Supreme Court of India in Ajit Singh Januja's case to the controversy in hand is, whether respondent No.4 was promoted to a next higher post i.e. the post higher than the post of Agriculture Sub Inspector before the petitioner came to be promoted as Agriculture Sub Inspector in the year 2001. If the answer to the aforesaid query is in the affirmative, then the petitioner would not be entitled to regain his seniority over respondent No.4 in terms of the decision rendered in Ajit Singh Januja's case (supra) specially on the basis of the extract therefrom as has been reproduced herein above. If the answer to the aforesaid query is in the negative, the petitioner would be justifiably entitled to regain his seniority over respondent No.4 on his promotion as Agriculture Sub Inspector.

It is not a matter of dispute that respondent No.4 was not allowed any further promotion till the petitioner was promoted as Agriculture Sub Inspector on 20.1.2001.As such, we are satisfied that the

decision rendered by the Apex Court in Ajit Singh Januja's case (supra) squarely applies to the present controversy, and as such, the petitioner in terms of the aforesaid decision would be entitled to regain his seniority over respondent No.4 on his promotion from the post of Beldar to the post of Agriculture Sub Inspector on 20.1.2001.

In so far as, the second contention of the learned counsel for the respondent is concerned, namely, the policy instructions dated 15.12.2005, we are of the view that the same would be clearly inconsequential to the issue of seniority between the petitioner and respondent No.4. This view of ours is based on a categorical determination in the aforesaid State Government instructions, to the effect, that the said instructions would come into force w.e.f. 17.11.2005. Since the petitioner as well as respondent No.4 were promoted as Agriculture Sub Inspectors well before the aforesaid date, their inter se seniority will have to be determined in terms of the decision rendered in Ajit Singh Januja's case as has been noticed hereinabove, and not on the basis of the policy instructions dated 15.12.2005.

In view of the above, the instant writ petition is allowed. The impugned order dated 19.9.2005 (Annexure P-5) is set aside. The respondents are directed to issue a seniority list placing the petitioner above respondent No.4 forthwith. The petitioner shall also be entitled to all consequential benefits.

(J. S. KEHAR)
JUDGE

May 1, 2007 **(L.N.MITTAL)**
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